IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2006

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THE HONOURABLE MR.JUSTICE P.JYOTHIMANI

W.P.NO.42504 OF 2006

N.Balasubramanian .. Petitioner

Vs.

1.The Commissioner/Secretary,
Ministry of Health and Family Welfare,
Government of India,
Nirman Bhavan,
New Delhi-110 011.
2.The Secretary,
Health and Family Welfare Department,
Government of Tamil Nadu,
Fort St. George,
Chennai-600 009.
3.The Director of Family Welfare,
State Family Welfare Bureau,
"DMS Complex", 6th Floor,
Teynampet,
Chennai-600 018.
4.The Secretary,
Durgabai Deshmukh General and
Medical Centre,
Raja Annamalaipuram,
Chennai-600 028. .. Respondents

This writ petition is preferred under Article 226 of the Constitution of India praying for the issue of a writ of mandamus directing the respondents 3 and 4 to compute the salary and other allowances payable to the petitioner from 01.10.2003 upto and inclusive of 31.5.2006 on the basis of what the petitioner was drawing as on 30.9.2006, viz. Rs.8,163/- per month and pay the petitioner the said sum.

For Petitioner : M/s.Menon & Goklaney Associates

For Respondents : Mr.P.Gopitaja, GA

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ORDER

The writ petitioner was appointed as a Male Welfare Worker under the fourth respondent based on a scheme. After the scheme period was over, he was terminated by the fourth respondent and at that time, the petitioner was drawing salary of Rs.8,163/- per month. It was in those circumstances, the petitioner has approached this Court by filing W.P.No.25273 of 2004 for a direction against the respondents to post the petitioner as Male Welfare Worker in the Urban Family Welfare Centre, Unit-II run by the fourth respondent. This Court, while disposing of the writ petition, by order, dated 7.9.2004, has directed the third respondent to consider the petitioner's request to appoint him as a Male Welfare Worker in the Urban Family Welfare Centre, Unit-II, within a period of two months. According to the petitioner, pursuant to the order of this Court, the petitioner was appointed as a Male Welfare Worker in the Urban Family Welfare Centre, Unit-II, which is within the control of the fourth respondent. However, while fixing the salary, it was not treated as a continuation of the earlier service rendered by the petitioner under the fourth respondent, but salary was fixed at the rate of Rs.5877/- without taking into consideration the earlier service rendered by the petitioner under the fourth respondent. In view of the same, the petitioner has made many representations, including the last representation, which was on 9.9.2006 to the third and fourth respondents.

2.I have heard the learned counsel for the petitioner and Mr.P.Gopiraja, Government Advocate, who takes notice on behalf of the respondents.

3.The learned Government Advocate would submit that the earlier order of termination from service by the fourth respondent is not set aside as on today. Earlier, the appointment of the petitioner under the fourth respondent was made under a scheme and now, the scheme has come to an end. Hence, there was no question of continuation of service under the fourth respondent. Even in the writ petition filed by the petitioner before this Court, this Court has directed the third respondent to consider the petitioner to be appointed in a different scheme and therefore, the appointment made in furtherance of the order of this Court by the fourth respondent under a different scheme should be considered as a fresh appointment and hence, the question of continuation of earlier service and the payment of salary at the rate of Rs.8163/- per month does not arise. In any event, the petitioner had made a representation to the third and fourth respondents on 9.9.2006. The learned counsel for the petitioner would fairly submit that the petitioner will be satisfied if a direction is given to the third and fourth respondents to consider the said representation on merits and in accordance with law.

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4.In view of the submissions made by the learned counsel for the petitioner and also by the respondents, I am of the considered opinion that the third and fourth respondents should be directed to consider the representation afresh and pass appropriate orders. It is also relevant to point out that even by letter, dated 8.10.2003, the second respondent has stated that there is no impediment to absorb the petitioner as Male Welfare Worker in Urban Family Welfare Centre, Unit-II, which according to the petitioner would mean that it should be treated as continuation of service. The third and fourth respondents are directed to consider the representation of the petitioner dated 9.9.2006 based on the observations made above and pass appropriate orders within a period of eight weeks from the date of receipt of copy of this order.

5.With the above directions, this writ petition is disposed of. There shall be no order as to costs.

vvk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Commissioner/Secretary,
Ministry of Health and Family Welfare,
Government of India,
Nirman Bhavan,
New Delhi-110 011.

2.The Secretary,
Health and Family Welfare Department,
Government of Tamil Nadu,
Fort St. George,
Chennai-600 009.

3.The Director of Family Welfare,
State Family Welfare Bureau,
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Chennai-600 018.

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4.The Secretary,
  Durgabai Deshmukh General and
   Medical Centre,
  Raja Annamalaipuram,
  Chennai-600 028.

2 ccs to M/s.Menon & Goklaney Associates, SR.52968
1 cc to the Government Pleader, SR.53145

gv (co)

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